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10/630,560	07/30/2003	Janusz Jachowicz	FDN-2805	8640

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INTERNATIONAL SPECIALTY PRODUCTS
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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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03/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

Receipt is acknowledged of amendment and remarks filed on 11/18/08. Claim 49 has been canceled as per applicants' amendment dated 11/18/08. Claims 1-48 are currently pending in the application.

Claim Rejections - 35 USC § 102

Claims 1-14 and 16-47 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent 7,223,294 ('294).

See col.11, line 22 through col.12, line 63 for the claimed cationic polymer formed from a, b and c. see the proviso at col.12, which states that if m and n are equal to zero, then p or q is equal to zero. See col.13, ll 4-13 for the species of cationic polymer and these are same as species claimed in claim 8. See col.21, line 54 through col.28, line 28 for the claimed conditioning agent, which is cationic polymer. See col.4, line 36 through col.6, line 45 for anionic polymer of claim 19, see col.28, line 29 through col.33, line 25 for amphoteric polymers of claim 20 and claims 35-39, see col.14, line 54 through col. 15, line 48 for nonionic polymer of claim 21 see especially col.15, under (4) this is same as claimed copolymers of alkyl acrylates and alkyl methacrylates, see col.15, ll 29-34 for claim 22, which is non-silicone polyurethanes. See col.34, ll 27-48 for claims 25-29 and 42, see col.34, ll 12-19 for claims 30-31, see col.16, line 65 through col.21, line 28 for claims 32-34, see col.34, ll 44-68 for claims 40-41 belonging to non-ionic surfactant, see col.33, ll 26-33 for claim 43, see col.34, ll 1-111 for claim 44 and see col.34, line 49 through col.35, ll 1-7 for claims 45-47.

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Response to Arguments

Applicant's arguments filed 11/18/08 have been fully considered but they are not persuasive.

Applicants' argue that patent '294 does not require at least one cationic terpolymer since patent '294 teaches compositions that may require at least one monomer of formula I or formula II and thus the cationic polymer of patent '294 is not a terpolymer.

In response to the above argument, patent clearly discloses cationic terpolymer. Applicants' attention is drawn to col.13, ll 4-13 which discloses the species. See below.

Cationic poly(vinylactam) polymers according to the invention that are especially used include vinylpyrrolidone/ 5
dimethylaminopropylmethacrylamide/dodecyldimethyl-
methacrylamidopropylammonium tosylate terpolymers,
vinylpyrrolidone/dimethylaminopropylmethacrylamide/co-
cocyldimethylmethacrylamidopropylammonium tosylate ter-
polymers and vinylpyrrolidone/dimethylaminopropyl- 10
methacrylamide/
lauryldimethylmethacrylamidopropylammonium tosylate or
chloride terpolymers.

The same species are claimed in claim 8. See below for claim 8.

8. (Original) The composition of Claim 1 wherein said cationic polymer is a terpolymer selected from the group consisting of vinylpyrrolidone/dimethylaminopropylmethacrylamide/
dodecyldimethylmethacrylamidopropylammonium tosylate terpolymers,
vinylpyrrolidone/dimethylaminopropylmethacrylamide/
cocoyldimethylmethacrylamidopropylammonium tosylate terpolymers,
vinylpyrrolidone/dimethylaminopropylmethacrylamide/lauryldimethyl-
methacrylamidopropylammonium tosylate or chloride terpolymers.

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Thus claims are anticipated by patent '294.

Secondly applicants' argue that even if the patent '294 were to each such a cationic terpolymer patent '294 is not a valid reference under 102 (e) as applicants' were in possession of the present invention before the earliest effective filing date and if necessary applicants' are willing to provide declaration.

In response patent '294 is valid reference under 102(e) as the effective date of instant application is 7/30/03.

Claim Rejections - 35 USC § 103

Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 7,223,294 ('294) and 6,540,791 ('791) and WO 01/41722 (WO document) and 6,984,250 ('250).

Examiner is relying on patent '250, which is English equivalent for WO document. Patent '294 does not disclose the limitation of claim 15, wherein the conditioning agent is drawn to various silicone compounds and limitation of claim 48, wherein the composition is an anhydrous composition. Patent '791 teaches bleaching compositions (personal care compositions for hair) using conditioning agents. Patent at col.4, line 50 through col. 22, line 41 teaches claimed silicone compounds as conditioning agents. Patent at col.26, ll 29 through col.30, line 32 teaches cationic polymers claimed in claim 14 also as conditioning agents. Thus patent teaches the equivalency between cationic polymers and silicones. Cationic polymers are taught in patent '294. Patent '791 also teaches claimed oxidative hair coloring agent, surfactants, and dyes. English equivalent of WO document, which is patent '250 teaches bleaching compositions

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(personal care compositions for hair) and teaches these compositions can be in anhydrous form at col.1, ll 39-41 and col2, ll 33-35.

Accordingly, it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of patent '294 and substitute the conditioning agent, which is cationic polymer of patent '294 with silicones as the conditioning agent in view of equivalency between both the conditioning agents taught by patent '791, expecting silicones to provide conditioning property to hair and prepare the compositions in anhydrous form taught by WO document that personal compositions for hair (bleaching) can be an anhydrous form. This is a prima facie case of obviousness.

Response to Arguments

Applicant's arguments filed 11/18/08 have been fully considered but they are not persuasive.

Applicants' argue that as stated previously, the '294 patent does not teach each and every element of the pending claims and even if it does, applicants believe that the '294 patent is not a valid reference over the presently pending claims, furthermore, a combination of the teachings of the '294 patent with those of the '791 patent and the '250 patent is at least improper, and at most does not cure the defects of the '294 patent since the '294 patent does not teach compositions comprising at least a cationic terpolymer, such a combination with the other cited references would not yield in the presently claimed compositions.

As explained above under 102 (e) patent '294 teaches every limitation and patent '294 is prior art under 102 (e) and patent '294 does not teach the limitation of claims 15 and 48 therefore claims are obvious over the combination of patents '294 and '191 and WO 01/01/41722 ('722).

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619